

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|--|---|------------------|
| CHICAGO REGIONAL COUNCIL OF |) | |
| CARPENTERS PENSION FUND, et al., |) | |
| |) | |
| Plaintiffs, |) | 07 C 3484 |
| v. |) | |
| |) | Judge Norgle |
| PECATONICA FLOORING, INC., an Illinois |) | |
| corporation |) | Magistrate Nolan |
| |) | |
| Defendant. |) | |

MOTION FOR ENTRY OF FINAL JUDGMENT

Plaintiffs, the CHICAGO REGIONAL COUNCIL OF CARPENTERS PENSION FUND, ET AL. (collectively "Trust Funds"), by their attorney Kevin P. McJessey, hereby move this Court pursuant to Federal Rules of Civil Procedure 54, 55 and 58 and this Court's order of November 9, 2007 to enter a final judgment against PECATONICA FLOORING, INC., an Illinois corporation. In support of their motion, Plaintiffs state as follows:

1. The Trust Funds filed a complaint against the Defendant under ERISA to compel an audit of Defendant's books and records, for collection of unpaid contributions, interest and liquidated damages, for attorneys' fees and auditors' fees pursuant to the collective bargaining agreements and the trust agreements to which Defendant is signatory. Defendant has failed to answer or appear.

2. This Court entered an order of default against the Defendant pursuant to Federal Rule of Civil Procedure 55(a) on November 9, 2007. The order provided that.

A. to provide the Trust Funds or their designated auditors, James Egan & Associates, Ltd. complete access to Defendant's books records within twenty-one (21) days so that the Trust Funds may conduct an audit of Defendant's fringe benefit contributions for the period May 2, 2005, to present;

- B. to pay any and all amounts the Trust Funds may discover to be due pursuant to the audit;
- C. to pay auditor's fees of \$3,735.25 incurred by the Trust Funds to date to complete the audit of Defendant's books and records and such additional auditor's fees as the Trust Funds incur to complete the audit;
- D. to pay interest on the amount that is due pursuant to 29 U.S.C. § 1132(g)(2)(B);
- E. to pay interest or liquidated damages on the amount that is due pursuant to 29 U.S.C. § 1132(g)(2)(C), whichever is greater;
- F. to pay \$1,275.28 in reasonable attorneys' fees and costs the Trust Funds incurred in this action pursuant to 29 U.S.C. § 1132(g)(1) and/or § 1132(g)(2)(D) and attorneys' fees that the Trust Funds incur to obtain full compliance with this Order and to collect any amounts due and owing to the Trust Funds; and
- G. to award the Trust Funds such other and further relief as the Court deems just and equitable.

Order, Nov. 9, 2007, Exhibit A.

3. After numerous orders imposing sanctions against Defendant, *see* orders of February 15, 2008 (\$50/day sanction) and March 28, 2008 (\$100/day sanction), Defendant finally produced its books and records to the auditor, who completed the audit.

4. The amount owed by Defendant based on the audit is \$24,346.31, which includes \$9,783.33 in unpaid contributions, \$4,597.36 in interest, \$5,477.25 in auditors' fees, and \$4,488.37 in attorneys fees as follows:

- A. \$9,783.33 in unpaid contributions pursuant to the audit; *see* Decl. of J. Rosemeyer, ¶6, Exhibit B; Decl. of C. Kogut, ¶3, Exhibit C;
- B. \$5,477.25 for auditor's fees of incurred by the Trust Funds to complete the audit of Defendant's books and records; *see* Decl. of J. Rosemeyer, ¶6, Exhibit B; Decl. of C. Kogut, ¶2, Exhibit C;
- C. \$4,597.36 in "double interest" under ERISA on the amount that is due; *see* 29 U.S.C. § 1132(g)(2)(B); 29 U.S.C. § 1132(g)(2)(C); Decl. of J. Rosemeyer, ¶7, Exhibit B; Decl. of C. Kogut, ¶3, Exhibit C; and

- D. \$4,487.37 in reasonable attorneys' fees and costs the Trust Funds incurred in this action pursuant to 29 U.S.C. § 1132(g)(1) and/or § 1132(g)(2)(D); *see* McJessey Decl., ¶4, Exhibit D).

Order, November 8, 2007.

5. A proposed draft order is attached as Exhibit E.

WHEREFORE, Plaintiffs the Chicago Regional Council of Carpenters' Fund et al. hereby move this Court to enter judgment in their favor and against Defendant Pecatonica Flooring, Inc. in the amount of \$24,346.31 as follows:

- A. \$9,783.33 in unpaid contributions pursuant to the audit;
- B. \$5,477.25 for auditor's fees of incurred by the Trust Funds to complete the audit of Defendant's books and records;
- C. \$4,597.36 in "double interest" under ERISA on the amount that is due;
- D. \$4,487.37 in reasonable attorneys' fees and costs the Trust Funds incurred in this action pursuant to 29 U.S.C. § 1132(g)(1) and/or § 1132(g)(2)(D);
- E. reasonable attorney' fees and costs incurred by the Trust Funds in enforcing this order; and
- F. such other relief as this Court deems appropriate.

CHICAGO REGIONAL COUNCIL OF CARPENTERS
PENSION FUND et al.

By: s/ Kevin P. McJessey
One of their attorneys

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CERTIFICATE OF SERVICE

I, Kevin P. McJessey, an attorney, certify that I caused the foregoing **Motion for Entry of Final Judgment** to be served upon

Pecatonica Flooring, Inc.
c/o Angela M. Newkirk, President
10564 Ridott Road
Pecatonica, Illinois 61063

via U.S. First Class Mail, postage prepaid, deposited in the United States Mail Depository at 3759 N. Ravenswood, Chicago, Illinois on this 10th day of December 2008.

s/ Kevin P. McJessey
Kevin P. McJessey